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S A C K E T T
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Attorney for Plaintiff

/as

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DISTRICT

LINDA M. FREDRICK,

Plaintiff,

v.

KILOLO KIJAKAZI,¹

Acting Commissioner of Social Security,

Defendant.

Case No.: 5:20-cv-04708-SVK

STIPULATION AND ~~[PROPOSED]~~
ORDER FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES
PURSUANT TO THE EQUAL
ACCESS TO JUSTICE ACT, 28
U.S.C. § 2412(d)

On January 3, 2022 this Court issued an order reversing the final decision of the Defendant, Kilolo Kijakazi, the Acting Commissioner of Social Security (Commissioner), with a remand for a rehearing, 42 U.S.C. § 405(g) (sentence four); judgment was entered.

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure Kilolo Kijakazi should be substituted, therefore, for Commissioner Andrew Saul as Defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 In the interest of administrative and judicial economy, the parties have agreed to
 2 stipulate that an award of FOUR THOUSAND THREE HUNDRED NINETY-THREE
 3 DOLLARS AND NINETY-EIGHT CENTS (\$4,393.98) in attorney fees under the Equal
 4 Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), is reasonable. This award is without
 5 prejudice to Plaintiff's right to seek attorney's fees under section 206(b) of the Social Security
 6 Act, 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. However, this award
 7 shall constitute a complete release from and bar to any claims Plaintiff may have relating to
 8 EAJA fees and costs. Further, such award shall not be used as precedent in any future cases,
 9 nor be construed as a concession by the Commissioner that the original administrative decision
 10 denying benefits to Plaintiff was not substantially justified.

11 After the Court issues an order for EAJA fees to Plaintiff, the Government will
 12 consider the matter of Plaintiff's assignment of EAJA fees to Harvey P. Sackett ("Counsel").
 13 Pursuant to Astrue v. Ratliff, 560 U.S. 586 (2010), the ability to honor an assignment will
 14 depend on whether the fees are subject to any offset allowed under the United States
 15 Department of the Treasury's Offset Program. After the order for EAJA is entered, the
 16 Government will determine whether they are subject to offset. Fees shall be made payable to
 17 Plaintiff, but if the Department of Treasury determines Plaintiff does not owe a federal debt,
 18 then the Government shall cause the payment of fees, expenses, and costs to be made payable
 19 directly to Counsel, pursuant to the assignment executed by Plaintiff. Any payments made
 20 shall be delivered and made payable to Counsel.

21 Accordingly, Defendant agrees to pay Plaintiff \$4,393.98 in attorney's fees.

22 All parties whose signature lines appear in this document have consented to its filing.
 23 This award is without prejudice to the rights of Sackett and Associates and/or Harvey P.
 24 Sackett to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the
 25 savings clause provisions of the EAJA.
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1 Dated: March 21, 2022

SACKETT AND ASSOCIATES

2 By: /s/ HARVEY P. SACKETT
3 HARVEY P. SACKETT
4 Attorney for Plaintiff
LINDA FREDRICK

5 Dated: March 21, 2022

STEPHANIE HINDS
United States Attorney

7 By: /s/ DANIEL PAUL TALBERT
8 DANIEL PAUL TALBERT
9 Special Assistant United States Attorney
10 Attorney for Defendant
[*As authorized by email on 3/21/22]

11 **ORDER**

12 Pursuant to the stipulation, IT IS SO ORDERED.

13 Dated: March 22, 2022

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15 HON. SUSAN VAN KEULEN
16 United States Magistrate Judge
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